REMARKS

Reconsideration and allowance of this Application are respectfully requested. Claims 1-46 remain pending. By this communication claims 1, 21, and 31 are amended. Support for the amended subject matter can be found, for example, in paragraph 48 of the disclosure.

Applicant's claims were variously rejected under 35 U.S.C. §103(a) for alleged obviousness. Claims 11-14 and 34-39 were rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Schroeder et al* in view of *Teicher et al* (U.S. Patent No. 5,933,813). Claims 17-20 and 40-43 were rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Schroeder* in view of *Kanojia et al* (U.S. Patent No. 6,845,396). Claims 21-25 and 45 stand rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Teicher* in view of *Schroeder*. Claims 26-30 stand rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Tiecher* in view of *Kanojia*. Applicant respectfully traverses these rejections.

Particularly, in numbered paragraph 3 beginning on page 2 of the Office Action, claims 1-10, 15, 16, 31-33, 44, and 46 are rejected under 35 U.S.C. §103(a) for alleged unpatentability over *Schroeder et al* (U.S. Patent Publication No. 2003/0130883). Applicant respectfully traverses this rejection.

Exemplary Figures 1-10 described a system in which a retailer and manufacturer contribute information to a promotion and price computation model that calculates a retail price according to a sales contract. The manufacturer contributes promotion information, generally in the form of a manufacturer "buy down" or "discount", and the retailer contributes price determination parameters. The promotion and price computation model calculates a retail price based on the

aforementioned data. The promotion and price computation model implements a contractual promotional agreement between the retailer and the manufacturer based on the calculation. To monitor whether a retailer violates a contract, a contract violation flag can be set by the system and later detected by the manufacturer during an audit of the retailer's records in the system.

Applicant's independent claims broadly encompass the foregoing features. For example, independent claims 1, 21, and 31 broadly encompass the foregoing features. For example, claims 1 and 31 recite a method that includes, among other features, the auditing of improperly implemented promotions. Independent claim 21 recites a system that includes, among other features, a sales controller that is configured to audit improperly implemented promotions and send audit reports to the manufacturer.

The *Schroeder* patent fails to establish a *prima facie* case of obviousness because it does not disclose the aforementioned features. *Schroeder* discloses a method and system that predicts the profit attributable to a proposed sales promotion of a product. This business planner system permits a retailer or remote sales staff member to experiment with a variety of scenario to determine the benefit of alternate promotions (see paragraph 56). The sales staff representing a manufacturer develops a promotion plan for a given time period. The proposed promotions are entered in a computer program that runs a model based on a prediction of increased sales to determine a set of promotion conditions. The tool uses historical databases of sales for a variety of promotion conditions as specific retailers and predicts how plan promotion will affect sales in a particular store. See paragraphs 57 and 58.

Schroeder, however, fails to disclose or suggest a feature of auditing improperly implemented promotions, as recited in Applicant's claims. *Schroeder* is directed to a system of proposing a sales promotion and predicting the profit of a promotion. Thee is no indication that *Schroeder* contemplates that this system implements a promotion (see Abstract). While *Schroeder* does disclose that an administrator may modify database content and enter administrative information for the purpose of auditing (pgph 110), there is no indication that this auditing procedure is associated or directed to improperly implemented promotions. Particularly, the concept described in *Schroeder* does not implement a promotion, which is between a manufacturer and retailer, but rather is useful for only predicting profits of proposed sales promotions. Thus, *Schroeder* would have no need to audit an improperly implemented promotion since it is directed to the planning of a promotion before its implementation. For this reason, a *prima facie* case of obviousness has not been established.

Teicher is similar to *Schroeder* in that it is directed to determining sales promotion prices of products based on merchant information and store information. The system generates a list of sales prices that are presented to consumers as an announcement or through a display device. Because the store seemingly has no contract over the presentation of the promotions to the consumer, one of ordinary skill would recognize that improper implementation of the promotion would not occur. That is, because the promotions are calculated and implemented without input from the store, the likelihood that a store could manipulate the sale is virtually eliminated.

The PTO acknowledges that *Schroeder* and *Teicher* fail to disclose or suggest Applicant's claimed encrypted promotion schedule and relies on *Kanojia* in an effort to remedy this deficiency.

Kanojia discloses a system in which targeted content, including promotions, is communicated to users of network devices whose attributes match the attributes of a group profile. In the system, a server communicates bi-directionally with network devices via the Internet over a private, secure, entrypted connection such as a Virtual Private Network (VPN) (see col. 4, lines 32-35; col. 5, lines 43-49). *Kanojia*, however, does not disclose or suggest the distribution of a promotion schedule over the VPN. At best, *Kanojia* discloses that promotions can be communicated over the VPN. Even assuming *arguendo* that *Kanojia* can reasonably be interpreted to disclose an encrypted promotion schedule, this reference does not remedy the deficiencies of *Schroeder* and *Teicher* with respect to auditing of improperly implemented promotions as recited in Applicant's claims.

In summary, *Schroeder*, *Teicher*, and *Kanojia* when applied individually or collectively fail to establish a *prima facie* case of obviousness. In particular, neither of the foregoing documents discloses or suggests auditing improperly implemented promotions as recited in Applicant's claims.

The Office is reminded that the Office has the initial burden of establishing a **factual basis** to support the legal conclusion of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). For rejections under 35 U.S.C. § 103(a) based upon a combination of prior art elements, in KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007), the Supreme Court stated that "a patent composed of several elements is not proved obvious

merely by demonstrating that each of its elements was, independently, known in the prior art." "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some **articulated reasoning with some rational underpinning** to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (emphasis added). Accordingly, withdrawal of these rejections is respectfully requested.

Based on at least the foregoing amendments and remarks, Applicant submits that claims 1-46 are allowable, and this application is in condition for allowance. Accordingly, Applicant requests a favorable examination and consideration of the instant application. In the event the instant application can be placed in even better form, Applicant requests that the undersigned attorney be contacted at the number below.

Respectfully submitted,

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